

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MELVIN JOSEPH SIMMONS,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS, et al.,

Defendants.

No. 2:21-cv-1236 TLN AC P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se in this civil action.

I. Statutory Screening of Prisoner Complaints

The court is required to screen complaints brought by prisoners seeking relief against “a governmental entity or officer or employee of a governmental entity.” 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are “frivolous, malicious, or fail[] to state a claim upon which relief may be granted,” or that “seek[] monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b).

A claim “is [legally] frivolous where it lacks an arguable basis either in law or in fact.” Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). “[A] judge may dismiss . . . claims which are ‘based on indisputably meritless legal theories’ or whose ‘factual contentions are clearly baseless.’” Jackson v. Arizona, 885 F.2d 639,

640 (9th Cir. 1989) (quoting Neitzke, 490 U.S. at 327), superseded by statute on other grounds as stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000). The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. Franklin, 745 F.2d at 1227-28 (citations omitted).

“Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). “Failure to state a claim under § 1915A incorporates the familiar standard applied in the context of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).” Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted). In order to survive dismissal for failure to state a claim, a complaint must contain more than “a formulaic recitation of the elements of a cause of action;” it must contain factual allegations sufficient “to raise a right to relief above the speculative level.” Twombly, 550 U.S. at 555 (citations omitted). “[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action.” Id. (alteration in original) (quoting 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004)).

“[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id. (citing Twombly, 550 U.S. at 556). In reviewing a complaint under this standard, the court must accept as true the allegations of the complaint in question, Hosp. Bldg. Co. v. Trs. of the Rex Hosp., 425 U.S. 738, 740 (1976) (citation omitted), as well as construe the pleading in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor, Jenkins v. McKeithen, 395 U.S. 411, 421 (1969) (citations omitted).

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1           II.     Complaint

2           The complaint names as defendants the California Department of Corrections and  
3     Rehabilitation, the State of California, County of Lassen Government Center Prison Prosecution  
4     Program, Lassen County District Attorney Rios, Special Prosecutor Funk, California Correctional  
5     Healthcare Services, and Healthcare CEO Woods. ECF No. 1. The undersigned has reviewed the  
6     complaint, which is largely unintelligible. Plaintiff alleges infringement of his intellectual  
7     property; the “intellectual property” at issue appears to be plaintiff himself. The complaint does  
8     not present plausible factual allegations or legally coherent theories of liability that could support  
9     any claim for relief.

10          III.    No Leave to Amend

11          Leave to amend should be granted if it appears possible that the defects in the complaint  
12     could be corrected, especially if a plaintiff is pro se. Lopez v. Smith, 203 F.3d 1122, 1130-31  
13     (9th Cir. 2000) (en banc). However, if, after careful consideration, it is clear that a complaint  
14     cannot be cured by amendment, the court may dismiss without leave to amend. Cato v. United  
15     States, 70 F.3d 1103, 1105-06 (9th Cir. 1995).

16          The undersigned finds that, as set forth above, the complaint fails to state a claim upon  
17     which relief may be granted. The contents of the complaint, along with plaintiff’s subsequent  
18     filings (ECF Nos. 6, 9), are sufficiently unintelligible that it is clear that leave to amend would not  
19     result in a cognizable claim. As a result, leave to amend would be futile and the complaint should  
20     be dismissed without leave to amend.

21          IV.    Plain Language Summary of this Order for a Pro Se Litigant

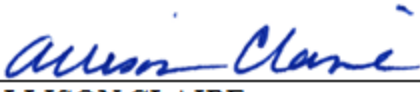
22          It is being recommended that your complaint be dismissed without leave to amend  
23     because your allegations do not state any claims for relief and it does not appear the problems can  
24     be fixed.

25          In accordance with the above, IT IS HEREBY RECOMMENDED that the complaint be  
26     dismissed without leave to amend for failure to state a claim.

27          These findings and recommendations are submitted to the United States District Judge  
28     assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days

1 after being served with these findings and recommendations, plaintiff may file written objections  
2 with the court. Such a document should be captioned “Objections to Magistrate Judges Findings  
3 and Recommendations.” Plaintiff is advised that failure to file objections within the specified  
4 time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153  
5 (9th Cir. 1991).

6 DATED: November 7, 2022

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8 ALLISON CLAIRE  
9 UNITED STATES MAGISTRATE JUDGE  
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